

The Department of Health proposes to make the following amendments to 7.34.2 NMAC.

7.34.2.7 DEFINITIONS:

- A.** “Act” means the Lynn and Erin Compassionate Use Act, NMSA 1978, Sections 26-2B-1 through 26-2B-7.
- B.** “Adequate supply” means an amount of cannabis, derived solely from an intrastate source and in a form approved by the department, that is possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient’s primary caregiver, that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of cannabis for a period of three months or 90 consecutive calendar days.
- C.** “Administrative review committee” means an intra-department committee that reviews qualified patient or primary caregiver application denials, licensed producer denials made by the program manager, or the summary suspension of a producer’s license, in accordance with department rules. The administrative review committee shall consist of the chief medical officer of the department (or that’s person’s designee); a deputy secretary of the department (or that person’s designee), and the chief nursing officer of the department (or that person’s designee).
- D.** “Administrative withdrawal” means the procedure for the voluntary withdrawal of a qualified patient or primary caregiver from the medical cannabis program.
- E.** “Advisory board” means the medical cannabis advisory board consisting of ~~[eight]~~ nine practitioners ~~[representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine, and gynecology]~~ knowledgeable about the medical use of cannabis, who are appointed by the secretary.
- F.** “Applicant” means any person applying for enrollment or re-enrollment in the medical cannabis program as a qualified patient, primary caregiver, or licensed producer.
- G.** “Approved laboratory” means a ~~[laboratory]~~ licensed cannabis testing facility as defined in the Lynn and Erin Compassionate Use Act, NMSA 1978, § 26-2B-3(I) that has been approved by the department specifically for the testing of cannabis, concentrates, and cannabis derived products.
- H.** “Batch” means, with regard to usable cannabis, a homogenous, identified quantity of cannabis no greater than five pounds that is harvested during a specified time period from a specified cultivation area, and with regard to concentrated and cannabis-derived product, means an identified quantity that is uniform, that is intended to meet specifications for identity, strength, and composition, and that is manufactured, packaged, and labeled during a specified time period according to a single manufacturing, packaging, and labeling protocol.
- I.** “Cannabidiol (“CBD”)” is a cannabinoid and the primary non-psychoactive ingredient found in cannabis.
- J.** “Cannabis” means ~~[all parts of the plant, cannabis sativa, and cannabis indica, whether growing or not and the resin extracted from any part of the plant]~~ all parts of the plant Cannabis sativa L. containing a delta-9-tetrahydrocannabinol concentration of more than three-tenths percent on a dry weight basis, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin; and (2) does not include the mature stalks of the plant; fiber produced from the stalks; oil or cake made from the seeds of the plant; any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake; the sterilized seed of the plant that is incapable of germination; the weight of any other ingredient combined with cannabis to prepare topical or oral administrations, food, drink or another product; or hemp.
- K.** “Cannabis-derived product” means a product, other than cannabis itself, which contains or is derived from cannabis, not including hemp.
- L.** “Concentrated cannabis-derived product (“concentrate”)” means a cannabis-derived product that is manufactured by a mechanical or chemical process that separates any cannabinoid from the cannabis plant, and that contains (or that is intended to contain at the time of sale or distribution) no less than thirty-percent (30%) THC by weight.
- M.** “Courier” means a person or entity that transports usable cannabis within the state of New Mexico from a licensed non-profit producer to a qualified patient or primary caregiver, to another non-profit producer, to an approved laboratory, or to an approved manufacturer.
- N.** “Debilitating medical condition” means:
- (1) cancer;
 - (2) glaucoma;
 - (3) multiple sclerosis;

(4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;

(5) epilepsy;

(6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;

(7) admission into hospice care in accordance with rules promulgated by the department; [ø]

(8) amyotrophic lateral sclerosis;

(9) Crohn’s disease;

(10) hepatitis C infection;

(11) Huntington’s disease;

(12) inclusion body myositis;

(13) inflammatory autoimmune-mediated arthritis;

(14) intractable nausea or vomiting;

(15) obstructive sleep apnea;

(16) painful peripheral neuropathy;

(17) Parkinson’s disease;

(18) posttraumatic stress disorder;

(19) severe chronic pain;

(20) severe anorexia or cachexia;

(21) spasmodic torticollis;

(22) ulcerative colitis; or

(23)[(8)] any other medical condition, medical treatment, or disease as approved by the department which results in pain, suffering, or debility for which there is credible evidence that medical use cannabis could be of benefit.

- O.** “**Department**” means the department of health or its agent.
- P.** “**Facility**” means any building, space, or grounds licensed for the production, possession, testing, manufacturing, or distribution of cannabis, concentrates, or cannabis-derived products.
- Q.** “**Intrastate**” means existing or occurring within the state boundaries of New Mexico.
- R.** “**Laboratory applicant**” means a laboratory that seeks to become an approved laboratory, or that seeks renewal of approval as an approved laboratory, in accordance with this rule.
- S.** “**License**” means the document issued by the department granting the legal right to produce medical cannabis for a specified period of time.
- T.** “**Licensed producer**” means a person or entity licensed to produce medical cannabis.
- U.** “**Licensure**” means the process by which the department grants permission to an applicant to produce cannabis.
- V.** “**Lot**” means an identified portion of a batch, that is uniform and that is intended to meet specifications for identity, strength, and composition; or, in the case of a cannabis-derived product or concentrate, an identified quantity produced in a specified period of time in a manner that is uniform and that is intended to meet specifications for identity, strength, and composition.
- W.** “**Male plant**” means a male cannabis plant.
- X.** “**Manufacture**” means to make or otherwise produce cannabis-derived product or concentrate.
- Y.** “**Manufacturer**” means a ~~[business entity that manufactures cannabis-derived product that has been approved for this purpose by the medical cannabis program]~~ person that is licensed by the department to manufacture cannabis products; package, transport or courier cannabis products; have cannabis products tested by a cannabis testing facility; purchase, obtain, sell and transport cannabis products to other cannabis establishments; and prepare products for personal production license holders.
- Z.** “**Mature female plant**” means a harvestable female cannabis plant that is flowering.
- AA.** “**Medical cannabis program**” means the administrative body of the department charged with the management of the medical cannabis program and enforcement of program regulations, to include issuance of registry identification cards, licensing of producers, and regulation of manufacturing and distribution.
- BB.** “**Medical cannabis program manager**” means the administrator of the medical cannabis program who holds that title.
- CC.** “**Medical director**” means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program, and to perform other duties.

DD. “**Medical provider certification for patient eligibility form**” means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's professional opinion, the patient has a debilitating medical condition as defined by the act or this part and would be anticipated to benefit from the use of cannabis.

EE. “**Minor**” means an individual less than 18 years of age.

FF. “**Non-profit producer**” means a New Mexico corporation that has been designated as a non-profit corporation by the New Mexico Secretary of State, that has been licensed by the department to produce medical cannabis in the state of New Mexico.

GG. ~~[FF.]~~ “**Paraphernalia**” means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling, or otherwise introducing cannabis or its derivatives into the human body.

HH. ~~[GG.]~~ “**Patient enrollment/re-enrollment form**” means the registry identification card application form for patient applicants provided by the medical cannabis program.

II. ~~[HH.]~~ “**Personal production license**” means a ~~[license issued to a qualified patient participating in the medical cannabis program, to permit the qualified patient to produce medical cannabis for the qualified patient's personal use, consistent with the requirements of department rule]~~ license issued to a qualified patient or to a qualified patient's primary caregiver participating in the medical cannabis program to permit the qualified patient or the qualified patient's primary caregiver to produce cannabis for the qualified patient's use at an address approved by the department.

JJ. ~~[H.]~~ “**Petitioner**” means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment, or disease to be added to the list of debilitating medical conditions that qualify for the use of cannabis.

KK. ~~[JJ.]~~ “**Plant**” means any cannabis plant, cutting, or clone that has roots or that is cultivated with the intention of growing roots.

LL. ~~[KK.]~~ “**Policy**” means a written statement of principles that guides and determines present and future decisions and actions of the licensed producer.

MM. ~~[LL.]~~ “**Practitioner**” means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 *et seq.*, NMSA 1978.

NN. ~~[MM.]~~ “**Primary caregiver**” means a resident of New Mexico who is at least 18 years of age and who has been designated by the qualified patient or their representative and the patient's practitioner as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of cannabis pursuant to the provisions of the Lynn and Erin Compassionate Use Act, Section 26-2B-1 *et seq.*, NMSA 1978.

OO. ~~[NN.]~~ “**Primary caregiver application form**” means the registry identification card application form provided by the medical cannabis program.

PP. ~~[OO.]~~ “**Private entity**” means a private, non-profit organization that applies to become or is licensed as a producer and distributor of cannabis, concentrates, or cannabis-derived products.

QQ. ~~[PP.]~~ “**Proficiency testing**” means testing conducted by the department or its agent to determine the ability of a laboratory applicant or approved laboratory to accurately identify presence, quantity, or other factors pertaining to a given analyte.

RR. ~~[QQ.]~~ “**Qualified patient**” means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or department rules.

SS. ~~[RR.]~~ “**Registry identification card**” means a document issued and owned by the department which identifies a qualified patient authorized to engage in the use of cannabis for a debilitating medical condition or a document issued by the department which identifies a primary caregiver authorized to engage in the intrastate possession and administration of cannabis for the sole use of the qualified patient.

TT. ~~[SS.]~~ “**Representative**” means an individual designated as the applicant's or petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker.

UU. ~~[TT.]~~ “**Secretary**” means the secretary of the New Mexico department of health.

VV. ~~[UU.]~~ “**Secure grounds**” means a facility that provides a safe environment to avoid loss or theft.

WW. ~~[VV.]~~ “**Security alarm system**” means any device or series of devices capable of alerting law enforcement, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to detect or report an emergency or unauthorized intrusion.

~~XX. [WW.]~~ “Security policy” means the instruction manual or pamphlet adopted or developed by the licensed producer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

~~YY. [XX.]~~ “Seedling” means a cannabis plant that has no flowers and that is less than eight (8) inches in height.

~~ZZ. [YY.]~~ “Segregate” means to separate and withhold from use or sale batches, lots, cannabis, usable cannabis, or cannabis-derived products in order to first determine its suitability for use through testing by an approved laboratory.

~~AAA. [ZZ.]~~ “THC” means tetrahydrocannabinol, a cannabinoid that is the primary psychoactive ingredient in cannabis.

~~BBB. [AAA.]~~ “Technical evidence” means scientific, clinical, medical, or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

~~CCC. [BBB.]~~ “Telemedicine” means the use of telecommunications and information technology to provide clinical health care from a site apart from the site where the patient is located, in real time or asynchronously, including the use of interactive simultaneous audio and video or store-and-forward technology, or off-site patient monitoring and telecommunications in order to deliver health care services.

~~DDD. [CCC.]~~ “Testing” means the process and procedures provided by an approved laboratory for testing of cannabis and cannabis derived products, consistent with provisions of this rule.

~~EEE. [CCC.]~~ “Unit” means a quantity of usable cannabis, concentrate, or cannabis-derived product that is used in identifying the maximum supply that a qualified patient may possess for purposes of department rules.

~~FFF. [DDD.]~~ “Usable cannabis” means the dried leaves and flowers of the female cannabis plant and cannabis-derived products, including concentrates, but does not include the seeds, stalks, or roots of the plant. [7.34.2.7 NMAC - Rp, 7.34.2.7 NMAC, 2/27/2015; A, 2/29/2016; A, xx/xx/2019]

7.34.2.8 ADVISORY BOARD MEMBERSHIP REQUIREMENTS AND RESPONSIBILITIES:

A. Advisory board membership: The advisory board shall consist of [~~eight~~] nine practitioners [~~representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology. The practitioners shall be nationally board-certified in their area of specialty and knowledgeable about the medical use of cannabis~~] knowledgeable about the medical use of cannabis. The members shall be chosen for appointment by the secretary from a list proposed by the New Mexico medical society, the New Mexico nurses association, the New Mexico academy of family physicians, the New Mexico academy of physician assistants, the New Mexico pharmacists association, or the New Mexico Hispanic medical association.

B. Duties and responsibilities: The advisory board shall convene at least twice per year to:

- (1) review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis;
- (2) recommend quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and primary caregivers;
- (3) accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis and all lawful privileges under the act and implementing rules;
- (4) issue recommendations concerning rules to be promulgated for the issuance of registry identification cards; and
- (5) review conditions previously reviewed by the board and approved by the secretary for the purpose of determining whether to recommend the revision of eligibility criteria for persons applying under those conditions or to review new medical and scientific evidence pertaining to currently approved conditions.

D. Chairperson elect: The advisory board shall elect by majority vote cast of the [~~eight~~] nine member board a chairperson and an alternate. The chairperson or alternate shall exercise all powers and duties prescribed or delegated under the act or this rule.

[7.34.2.8 NMAC - Rp, 7.34.2.8 NMAC, 2/27/2015; A, xx/xx/2019]

7.34.2.10 ADVISORY BOARD PUBLIC HEARING PROCEDURES:

H. Public hearing process: The advisory board chairperson shall conduct the public hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

(1) A quorum of the advisory board shall consist of [~~three~~] five voting members.

[7.34.2.10 NMAC - Rp, 7.34.2.10 NMAC, 2/27/2015; A, xx/xx/2019]